

# United States Court of Appeals For the First Circuit

No. 05-1021  
DC No. 04-10023

---

MICHAEL SUBENKO

Petitioner - Appellant

v.

COMMONWEALTH OF MASSACHUSETTS; THE BROCKTON  
DISTRICT ATTORNEY'S OFFICE; BROCKTON  
SUPERIOR COURT

Respondents - Appellees

---

**ORDER OF COURT**  
**Entered: March 28, 2005**

Appellant's Affidavit to Accompany Motion for Leave to Proceed in Forma Pauperis, with attached prison trust account information, is construed as a motion to proceed on appeal in forma pauperis. We transmit the request to the district court for action in the first instance pursuant to Fed. R. App. P. 24(a)(1). Copies of the district court's ruling shall be forwarded to this court. The district court, if it denies the motion, is requested to state its reasons in writing. Fed. R. App. P. 24(a)(2). If defendant-appellant is not granted in forma pauperis status by the district court, he may file a motion to proceed in forma pauperis in this court, provided that he do so in accordance with Fed. R. App. P. 24(a)(5).

Also transmitted is a Rule 60(b) motion filed in the court of appeals in error.

CERTIFIED COPY

I HEREBY CERTIFY THIS DOCUMENT  
IS A TRUE AND CORRECT COPY OF  
THE ORIGINAL ON FILE IN MY OFFICE  
AND IN MY LEGAL CUSTODY.

FIRST CIRCUIT COURT OF APPEALS  
BOSTON, MA

By  Date: 4/13/05

By the Court:  
Richard Cushing Donovan, Clerk

By: **JULIE GREGG**  
Operations Manager

[Certified Copies: Honorable George A. O'Toole, Jr., Sarah A. Thornton, Clerk of the  
U.S. District Court of Massachusetts.]  
[cc: Natalie S. Monroe, AAG, Michael A. Subenko]